

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ISIDRO HERNANDEZ,

Plaintiff,

v.

EDMUND G. BROWN, JR., et al.,

Defendants.

Case No.: C 13-5870 CW (PR)

ORDER DENYING MOTIONS FOR  
EXTENSION OF TIME TO FILE IN  
FORMA PAUPERIS ON APPEAL  
AND FOR LEAVE TO FILE APPEAL IN  
FORMA PAUPERIS AND REVOKING IN  
FORMA PAUPERIS STATUS

Doc. nos. 14, 15

The Court granted Plaintiff, a state prisoner proceeding pro se, leave to proceed in forma pauperis (IFP) in this action. On April 4, 2014, the Court issued an Order of Dismissal on the grounds that Plaintiff's allegations of overcrowding in the prisons did not state cognizable claims for relief and that his claims based on specific injuries to himself were filed in the wrong venue. The latter claims were dismissed without prejudice so that Plaintiff could file them in the proper venue. On May 15, 2014, Plaintiff filed a notice of appeal. Now, Plaintiff moves for an extension of time to file his application to proceed IFP on appeal and for leave to proceed IFP on appeal.

An indigent party who cannot afford the expense of pursuing an appeal may file a motion for leave to proceed IFP. Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Pursuant to Federal Rule of Appellate Procedure 24(a), "a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court." The party must attach an affidavit that

(1) shows in detail "the party's inability to pay or give security for fees and costs," (2) "claims an entitlement to redress," and (3) "states the issues that the party intends to present on appeal." Fed. R. App. P. 24(a)(1). However, even if a party provides proof of indigence, "an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). An appeal is in "good faith" where it seeks review of any issue that is "non-frivolous." Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002). An issue is "frivolous" if it has "no arguable basis in fact or law." O'Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir. 1990).

Because it is clear that Plaintiff's general claims based on overcrowding have no arguable basis in fact or law and his claims based on specific injuries to himself that may have a basis in fact or law were not filed in the proper venue, this appeal is frivolous and not taken in good faith. Therefore, Plaintiff's IFP status is REVOKED and his motions for an extension of time to file his IFP application and his motion to proceed IFP on appeal are DENIED. The Clerk shall forward this Order to the Ninth Circuit Court of Appeals in case No. 14-15964. This Order terminates docket numbers 14 and 15.

IT IS SO ORDERED.

Dated: 6/5/2014



CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE